

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

JOANNE M. MORGAN, SP 2011-SP-018 Appl. under Sect(s). 8-914 and 8-923 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory storage structure to remain 0.9 ft. from the rear lot line and 1.3 ft. from the side lot line and fence greater than 4.0 ft. in height to remain in a front yard. Located at 4201 Plaza La. on approx. 10,495 sq. ft. of land zoned R-3 (Cluster) and WS. Springfield District. Tax Map 45-1 ((3)) (59) 1. Ms. Gibb moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 25, 2011; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the owner of the property.
2. The applicant testified that the shed was there when the applicant bought the property.
3. There is no testimony or evidence that the shed can be seen from the street.
4. There is no impact on the neighbors.
5. It is almost legal; it is about six inches too high.
6. Regarding the fence, this is a close case.
7. Under Section 8-923, the Board is to determine that the proposed fence is warranted based on factors to include, but not limited to, the location of the principal structure, the presence of multiple front yards, and concerns relating to safety and noise.
8. What the Board normally looks at is a matter of aesthetics and whether the fence violates sight distance issues.
9. In this case, staff reported that they have looked and, under the Ordinance, there is no violation of sight distance.
10. There is testimony from a neighbor who says that she has difficulty seeing out of her driveway, so that is the competing interest here.
11. The applicant has a great dane that is going to be able to get out of a four foot tall fence.
12. The testimony and photographs show that there are other fences, if not exactly like this, that are certainly six feet or taller in the neighborhood, and having several front yards is a consideration in the Zoning Ordinance.

THAT the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and the additional standards for this use as contained in the Zoning Ordinance. Based on the standards for building in error, the Board has determined:

- A. That the error exceeds ten (10) percent of the measurement involved;
- B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;
- C. Such reduction will not impair the purpose and intent of this Ordinance;

- D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;
- E. It will not create an unsafe condition with respect to both other property and public streets;
- F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and
- G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

- 1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.
- 2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED**, with the following development conditions:

- 1. This special permit is approved for the location of the fence and accessory storage structure (shed) as shown on the plat prepared by B.W. Smith and Associates, Inc. dated July 26, 2010, as revised through April 28, 2011 and signed July 26, 2010 by Timothy J. Farrell, Land Surveyor, as submitted with this application and is not transferable to other land.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Beard seconded the motion, which carried by a vote of 4-0-1. Mr. Hammack abstained. Mr. Hart and Mr. Byers were absent from the meeting.